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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,504	10/24/2005	Thorsten Pferdekaemper	07781.0218-00	3164
22852 7590 12/11/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER BATAILLE, PIERRE MICHE	
			ART UNIT 2186	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/526,504	Applicant(s) PFERDEKAEMPER ET AL.	
	Examiner Pierre-Michel Bataille	Art Unit 2186	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 14, 16-27 and 29-39 is/are rejected.
- 7) ☒ Claim(s) 12, 28 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/4/05 ; 7/13/06 ; 6/19/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The present Office Action is taken in conjunction to prosecution of the instant application presenting claims 1-14, 16, 18-40 for examination. Preliminary amendment dated March 04, 2005 has been considered.
2. The information disclosure statement (IDS) submitted on March 04, 2005 was filed before the mailing date of the First Action on the merit. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

3. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors.

Abstract:

The abstract of the disclosure is objected to because it is not in accordance with the Office requirements. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use

thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-14, 16, and 18-40 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12

and 15-31 of copending Application No. 10/526,747. Although the conflicting claims are not identical, they are not patentably distinct from each other because first and second locked object in application 10/526,504 are obviously used in lieu of transactional type locked object and permanent type of locked object, respectively, in application 10/526,747.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 1-12 and 15-31 of U.S. Patent Application 10/526,747 contains every element of claims 1-14, 16, and 18-40 of the instant application and as such anticipates claims 1-14, 16, and 18-40 of the instant application.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-11, 13-14, 16, 18-27, and 29-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,548,750 (Larsson et al) in view of US 2003/0004975 (Nakano).

With respect to claims 1, 14, 16, and 29, Larsson teaches the invention as claimed, method for moving data objects in a computer system from a first storage location to a second storage location, comprising: a) selecting one or more data objects from the first storage location as [Fig. 1, elements A' and C']; b) assigning an identifier (ID) of a first type to each of the selected data objects [(objects divided into classes and identified by object identities) Col. 1, Lines 37-39]; c) assigning an ID of a second type to each of the selected data objects; d) storing the second type ID in a second lock object [(objects been backup and marked in the LID table of the local data base) Col. 6,

Lines 45-47]; e) determining whether the second type ID was stored successfully in the second lock object, and upon a successful storage, storing the first type ID in a first lock object [(objects copied to backup area, changes from transactions to be included in the backup visible in the data base) Col. 6, Lines 14-17]; f) storing a data object, the first ID of which is contained in the first lock object, at the second storage location [(object copied to the backup area) Col 8, Lines 7-11]; g) deleting the data object, the first type ID of which is contained in the permanent type lock object, from the first storage location [record removed from LID table) Fig. 2 & 14, Col. 2]. Larsson fails to explicitly teach deleting the second type ID from the second locked object after a particular first type ID has been stored in the first lock object. However, Nakano teaches deleting the ID from the permanent type lock object after the respective data object assigned to that ID has been deleted from the first storage location [DBMS acceptance section 600 accepting notification indicative of the data insert completion and issuing a delete request to delete the insert original data) Par. 0104]. Therefore, it would have been obvious to one of ordinary skill in the art having the disclosure of Larsson and Nakano before him at the time of the invention to modify the method of Larsson by adapting the deletion of the original data object after it is copied to a second storage area. The motivation for doing so would have been to provide a database system, database management method and program, which, even during data rebalance execution of table data, can perform acceptance and execution of a database processing request such as search, update, delete or insert concurrently with the rebalance execution and with improved operability

and performance of a database, as suggested by Nakano [Par. 0009].

10. With respect to claims 2-11, 13, 18-27, and 30-39, the combination of Larsson and Nakano suggests the invention as it would be obvious that respective data assigned has been deleted from first storage location, data objects having one or more fields and the ID having one or more key fields in one or more tables, the ID assigned to file names [(all providing an resource interface in the form of table, addresses and pointers or Ids for facilitating search as illustrated in Fig. 11: Col. 4, Lines 45-47; Col. 6, Lines 14-17].

Allowable Subject Matter

11. Claims 12, 28, and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre-Michel Bataille whose telephone number is (571) 272-4178. The examiner can normally be reached on Mon, Tue-Fri (8:00A to 5:30P).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew M. Kim can be reached on (571) 272-4182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Pierre-Michel Bataille
Primary Examiner
Art Unit 2186